

LEGISLATIVE BILL 70

Approved by the Governor April 26, 2011

Introduced by Pahls, 31.

FOR AN ACT relating to the Surplus Lines Insurance Act; to amend sections 44-5502, 44-5503, 44-5504, 44-5505, 44-5506, 44-5508, 44-5510, 44-5511, and 44-5515, Reissue Revised Statutes of Nebraska; to define and redefine terms; to provide an exemption for commercial purchasers; to change provisions relating to licensure, records, annual statements, tax payments, solvency requirements, and nonadmitted insurers; to harmonize provisions; to provide an operative date; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 44-5502, Reissue Revised Statutes of Nebraska, is amended to read:

44-5502 For purposes of the Surplus Lines Insurance Act:

(1) Affiliated group means a group of entities in which each entity, with respect to an insured, controls, is controlled by, or is under common control with the insured;

(2) Control means:

(a) To own, control, or have the power of an entity directly, indirectly, or acting through one or more other persons to vote twenty-five percent or more of any class of voting securities of another entity; or

(b) To direct, by an entity, in any manner, the election of a majority of the directors or trustees of another entity;

~~(3) Department means the Department of Insurance;~~

~~(4) Director means the Director of Insurance;~~

~~(3) Insurer has the same meaning as in section 44-103;~~

(5) (a) Exempt commercial purchaser means any person purchasing commercial insurance that, at the time of placement, meets the following requirements:

(i) The person employs or retains a qualified risk manager to negotiate insurance coverage;

(ii) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of one hundred thousand dollars in the immediately preceding twelve months; and

(iii) The person meets at least one of the following criteria:

(A) The person possesses a net worth in excess of twenty million dollars, as such amount is adjusted pursuant to subdivision (5)(b) of this section;

(B) The person generates annual revenue in excess of fifty million dollars, as such amount is adjusted pursuant to subdivision (5)(b) of this section;

(C) The person employs more than five hundred full-time or full-time equivalent employees per individual insured or is a member of an affiliated group employing more than one thousand employees in the aggregate;

(D) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least thirty million dollars, as such amount is adjusted pursuant to subdivision (5)(b) of this section; or

(E) The person is a municipality with a population in excess of fifty thousand inhabitants.

(b) Beginning on the fifth occurrence of January 1 after the operative date of this act and each fifth occurrence of January 1 thereafter, the amounts in subdivisions (5)(a)(iii)(A), (B), and (D) of this section shall be adjusted to reflect the percentage change for such five-year period in the Consumer Price Index for All Urban Consumers published by the Federal Bureau of Labor Statistics;

~~(6) Foreign, alien, admitted, and nonadmitted, when referring to insurers, has the same meanings as in section 44-103 but does not include a risk retention group as defined in 15 U.S.C. 3901(a)(4); and~~

(7) (a) Except as provided in subdivision (7)(b) of this section, home state means, with respect to an insured, (i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence or (ii) if one hundred percent of the insured risk is located out of the state referred to in subdivision (7)(a)(i) of this section, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(b) If more than one insured from an affiliated group are named insureds on a single nonadmitted insurance contract, home state means the home state, as determined pursuant to subdivision (7)(a) of this section, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(c) When determining the home state of the insured, the principal place of business is the state in which the insured maintains its headquarters and where the insured's high-level officers direct, control, and coordinate the business activities of the insured;

(8) Insurer has the same meaning as in section 44-103;

(9) Nonadmitted insurance means any property and casualty insurance permitted to be placed directly or through surplus lines licensees with a nonadmitted insurer eligible to accept such insurance; and

(10) Qualified risk manager means, with respect to a policyholder of commercial insurance, a person who meets the definition in section 527 of the Nonadmitted and Reinsurance Reform Act of 2010, which is Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, as such section existed on January 1, 2011.

~~(5) Industrial insured means an insured that:~~

~~(a) Procures the insurance of any risk or risks other than sickness and accident insurance and life and annuity contracts, has fifty full-time employees, and has aggregate annual premiums for insurance on all risks other than workers' compensation insurance that total at least one hundred thousand dollars; and~~

~~(b) Uses, to procure such insurance, the services of a salaried full-time employee who counsels or advises his or her employer regarding the insurance interests of the employer or the employer's subsidiaries or business affiliates, if the employee does not sell or solicit insurance or receive a commission.~~

Sec. 2. Section 44-5503, Reissue Revised Statutes of Nebraska, is amended to read:

44-5503 The department, in consideration of the payment of the license fee, may issue a surplus lines license, revocable at any time, to any individual who currently holds an insurance producer license or to a foreign or domestic corporation. The corporate surplus lines license shall list all officers or employees of the corporation who currently hold an insurance producer license or meet the requirements for an individual surplus lines license and who have authority to transact surplus lines business on behalf of the corporation. Only individuals listed on the corporate surplus lines license shall transact surplus lines business on behalf of the corporate licensee. If the applicant is an individual, the application for the license shall include the applicant's social security number. The director may utilize the national insurance producer data base of the National Association of Insurance Commissioners, or any other equivalent uniform national data base, for the licensure of an individual or an entity as a surplus lines producer and for renewal of such license.

Sec. 3. Section 44-5504, Reissue Revised Statutes of Nebraska, is amended to read:

44-5504 (1) No person, other than an industrial insured, exempt commercial purchaser, shall place, procure, or effect insurance ~~upon any risk located in this state~~ for or on behalf of an insured whose home state is the State of Nebraska in any nonadmitted insurer until such person has first been issued a surplus lines license from the department as provided in section 44-5503.

(2) Application for a surplus lines license shall be made to the department on forms designated and furnished by the department and shall be accompanied by a license fee as established by the director not to exceed two hundred fifty dollars for each individual and corporate surplus lines license.

(3) (a) All corporate surplus lines licenses shall expire on April 30 of each year, and all individual surplus lines licenses shall expire on the licensee's birthday in the first year after issuance in which his or her age is divisible by two, and all individual surplus lines licenses may be renewed within the ninety-day period before their expiration dates and all individual surplus lines licenses also may be renewed within the thirty-day period after their expiration dates upon payment of a late renewal fee as established by the director not to exceed two hundred dollars in addition to the applicable fee otherwise required for renewal of individual surplus lines licenses as established by the director pursuant to subsection (2) of this section. All individual surplus lines licenses renewed within the thirty-day period after their expiration dates pursuant to this subdivision shall be deemed to have been renewed before their expiration dates. The department shall establish procedures for the renewal of surplus lines licenses.

(b) Every licensee shall notify the department within thirty days of any changes in the licensee's residential or business address.

Sec. 4. Section 44-5505, Reissue Revised Statutes of Nebraska, is amended to read:

44-5505 Each surplus lines licensee shall keep in the licensee's office a true and complete record of the business transacted by the licensee showing (1) the exact amount of insurance or limits of exposure, (2) the gross premiums charged therefor, (3) the return premium paid thereon, (4) the rate of premium charged for such insurance, (5) the date of such insurance and terms thereof, (6) the name and address of the nonadmitted insurer writing such insurance, (7) a copy of the declaration page of each policy and a copy of each policy form issued by the licensee, (8) a copy of the written statement described in subdivision ~~(3)~~ (1)(c) of section 44-5510 or, in lieu thereof, a copy of the application containing such written statement, (9) ~~the name and address of the insured,~~ the address of the principal residence of the insured or the address at which the insured maintains its principal place of business, (11) a brief and general description of the risk or exposure insured and where located, ~~(11)~~ (12) documentation showing that the nonadmitted insurer writing such insurance complies with the requirements of section 44-5508, and ~~(12)~~ (13) such other facts and information as the department may direct and require. Such records shall be kept by the licensee in the licensee's office within the state for not less than five years and shall at all times be open and subject to the inspection and examination of the department or its officers. The expense of any examination shall be paid by the licensee.

Sec. 5. Section 44-5506, Reissue Revised Statutes of Nebraska, is amended to read:

44-5506 Every surplus lines licensee transacting business under the Surplus Lines Insurance Act shall annually, on or before February 15 in each year, make and file with the department a verified statement upon a form prescribed by the department which shall exhibit the true amount of all such business transacted during the year ending on December 31 next preceding the filing thereof. The licensee shall, at the time such statement is filed, pay to the department a tax of three percent on the total gross amount of direct writing premiums received by the licensee on such business and the fire insurance tax prescribed in section 81-523. In no event shall such taxes be determined on a retaliatory basis pursuant to section 44-150. For purposes of this section, direct writing and premiums shall be as defined in section 77-907.

(1) For purposes of carrying out the Nonadmitted and Reinsurance Reform Act of 2010, which is Subtitle B of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, as such act existed on January 1, 2011, the director may enter into the Nonadmitted Insurance Multi-State Agreement in order to facilitate the collection, allocation, and disbursement of premium taxes attributable to the placement of nonadmitted insurance, provide for uniform methods of allocation and reporting among nonadmitted insurance risk classifications, and share information among states relating to nonadmitted insurance premium taxes.

(2) The director may participate in the clearinghouse established through the Nonadmitted Insurance Multi-State Agreement for the purpose of collecting and disbursing to reciprocal states any funds collected applicable to properties, risks, or exposures located or to be performed outside of this state. To the extent that other states where portions of the properties, risks, or exposures reside have failed to enter into a compact or reciprocal allocation procedure with the State of Nebraska, the net premium tax shall be retained by the State of Nebraska. If the director chooses to participate in the clearinghouse for the purpose authorized by this subsection, the director may also participate in such clearinghouse for purposes of surplus lines policies applicable to risks located solely within this state.

(3) Every surplus lines licensee transacting business under the Surplus Lines Insurance Act shall, on or before February 15 for the quarter ending the preceding December 31, May 15 for the quarter ending the preceding March 31, August 15 for the quarter ending the preceding June 30, and November 15 for the quarter ending the preceding September 30 of each year, make and file with the department a verified statement upon a form prescribed by the department or a designee of the director which shall exhibit the true amount of all such business transacted during that period.

(4)(a) Every surplus lines licensee transacting business under the Surplus Lines Insurance Act shall collect and pay to the director or the director's designee, at the time the statement required under subsection (3) of this section is filed, a sum based on the total gross premiums charged, less any return premiums, for surplus lines insurance provided by the licensee

pursuant to the license. In no event shall such taxes be determined on a retaliatory basis pursuant to section 44-150.

(b) When the insurance covers properties, risks, or exposures located or to be performed solely in this state on behalf of an insured whose home state is the State of Nebraska, the sum payable shall be computed based on an amount equal to three percent of the premiums to be remitted to the State Treasurer in accordance with section 77-912.

(c) When the insurance covers properties, risks, or exposures located or to be performed both in and out of this state, the sum payable shall be computed based on:

(i) For purposes of the portion that is attributable to instate risks, an amount and rate equal to that set forth in subdivision (4)(b) of this section; plus

(ii) For purposes of the portion that is attributable to out-of-state risks, an amount equal to the portion of the premiums allocated to each of the other states or territories and at a rate as established by each state or territory as being applicable to the properties, risks, or exposures located or performed outside of this state. The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the licensee shall be returned to the policyholder directly by the surplus lines licensee or through the producing broker, if any. The surplus lines licensee is prohibited from rebating, for any reason, any portion of the tax.

(5) The director may utilize or adopt the allocation schedule included in the Nonadmitted Insurance Multi-State Agreement for the purpose of allocating risk and computing the tax due on the portion of premium attributable to each risk classification and to each state in which properties, risks, or exposures are located.

Sec. 6. Section 44-5508, Reissue Revised Statutes of Nebraska, is amended to read:

44-5508 ~~(1) Every surplus lines licensee transacting business under the Surplus Lines Insurance Act shall ascertain the financial condition of each insurer before such licensee places any insurance with or procures any insurance from such insurer. If requested by the director, the licensee shall provide a copy of the current annual statement certified and sworn to by such insurer.~~

~~(2) No surplus lines licensee shall knowingly or without proper investigation place any insurance with or procure any insurance from any nonadmitted foreign or alien insurer that does not have surplus, capital, and reserves in amounts equal to or greater than the requirements of surplus, capital, and reserves placed on admitted insurers which write the same kinds of insurance.~~

~~(3) In addition to the requirements of subsection (2) of this section, no surplus lines licensee shall place any insurance with or procure any insurance from any nonadmitted alien insurer unless such insurer (a) maintains in the United States a trust fund in a qualified United States financial institution as defined in subsection (2) of section 44-416.08 in an amount not less than two million five hundred thousand dollars for the protection of policyholders in the United States, consisting of cash in United States currency, readily marketable securities, or clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution as defined in subsection (1) of section 44-416.08, and such trust fund shall have an expiration date which at no time shall be less than five years, or (b) is approved by the Nonadmitted Insurers Information Office of the National Association of Insurance Commissioners, and the director, in his or her discretion, has not independently determined such insurer to be in an unsound financial condition.~~

~~(4) No surplus lines licensee shall place any insurance with or procure any insurance from any nonadmitted Lloyd's plan or other similar group which includes incorporated and individual unincorporated underwriters unless such group maintains a trust fund of not less than fifty million dollars as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group and such trust complies with the terms and conditions established in subsection (3) of this section for nonadmitted alien insurers.~~

(1) A surplus lines licensee shall not place coverage with a nonadmitted insurer unless, at the time of placement, the surplus lines licensee has determined that the nonadmitted insurer:

(a) Is authorized to write such insurance in its domiciliary jurisdiction;

(b) Has established satisfactory evidence of good repute and financial integrity; and

(c) (i) Possesses capital and surplus or its equivalent under the laws of its domiciliary jurisdiction that equals the greater of the minimum capital and surplus requirements under the laws of this state or fifteen million dollars; or

(ii) If minimum capital and surplus does not meet the requirements of subdivision (1)(c)(i) of this section, then upon an affirmative finding of acceptability by the director. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company, company underwriting profit and investment income trends, market availability, and company record and reputation within the industry. The director shall not make an affirmative finding of acceptability if the nonadmitted insurer's capital and surplus is less than four million five hundred thousand dollars.

(2) No surplus lines licensee shall place nonadmitted insurance with or procure nonadmitted insurance from a nonadmitted insurer domiciled outside the United States unless the insurer is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the National Association of Insurance Commissioners.

~~(5)~~ (3) Any surplus lines licensee violating this section shall be guilty of a Class III misdemeanor.

~~(6)(a)~~ (4)(a) No nonadmitted foreign or alien insurer shall transact business under the act ~~Surplus Lines Insurance Act~~ if it does not comply with the surplus, and capital, and reserves requirements of subsection ~~(2)~~ (1) of this section.

(b) In addition to the requirements of subdivision (a) of this subsection, no nonadmitted alien insurer shall transact business under the act if it does not comply with the requirements of ~~subdivision (3)(a) or (b)~~ subsection (2) of this section.

~~(e) No nonadmitted Lloyd's plan or other similar group which includes incorporated and individual unincorporated underwriters shall transact business under the act if it does not comply with the requirements of subsection (4) of this section.~~

Sec. 7. Section 44-5510, Reissue Revised Statutes of Nebraska, is amended to read:

44-5510 (1) If an applicant for insurance is unable to procure such insurance as he or she deems reasonably necessary to insure a risk or exposure from an admitted insurer, such insurance may be procured from a nonadmitted insurer upon the following terms and conditions:

~~(1)~~ (a) The insurance shall be procured from a surplus lines licensee;

~~(2)~~ (b) The insurance procured shall not include any insurance described in subdivisions (1) through (4) of section 44-201;

~~(3)~~ (c) Not later than thirty days after the effective date of such insurance, the insured shall provide, in writing, his or her permission for such insurance to be written in a nonadmitted insurer and his or her acknowledgment that, in the event of the insolvency of such insurer, the policy will not be covered by the Nebraska Property and Liability Insurance Guaranty Association; and

~~(4)~~ (d) Compliance with section 44-5511.

(2) A surplus lines licensee seeking to procure or place nonadmitted insurance for an exempt commercial purchaser whose home state is the State of Nebraska shall not be required to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if:

(a) The surplus lines licensee procuring or placing the insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(b) The exempt commercial purchaser has subsequently requested in writing the surplus lines licensee to procure or place such insurance for a nonadmitted insurer.

Sec. 8. Section 44-5511, Reissue Revised Statutes of Nebraska, is amended to read:

44-5511 ~~No later than thirty days after the last day of each calendar quarter,~~ On or before February 15 for the quarter ending the preceding December 31, May 15 for the quarter ending the preceding March 31, August 15 for the quarter ending the preceding June 30, and November 15 for the quarter ending the preceding September 30 of each year, every surplus lines licensee shall file with the department a report containing such information as the department may require, including: (1) The name of the nonadmitted insurer; (2) the name of the licensee; (3) the number of policies issued by each nonadmitted insurer; (4) except for insurance placed or procured on behalf of an exempt commercial purchaser, a sworn statement by

the licensee with regard to the coverages described in the quarterly report that, to the best of the licensee's knowledge and belief, the licensee could not reasonably procure such coverages from an admitted insurer; and (5) the premium volume for each nonadmitted insurer by line of business.

Sec. 9. Section 44-5515, Reissue Revised Statutes of Nebraska, is amended to read:

44-5515 Every industrial insured exempt commercial purchaser whose home state is the State of Nebraska shall, on or before February 15 for the quarter ending the preceding December 31, May 15 for the quarter ending the preceding March 31, August 15 for the quarter ending the preceding June 30, and November 15 for the quarter ending the preceding September 30 of each year, pay to the department a tax in the amount required by subdivision (4)(a) of section 44-5506. annually, on or before February 15, pay to the department a tax of three percent on the total gross amount of insurance premiums for policies procured through nonadmitted insurers. Every industrial insured shall pay the fire insurance tax prescribed in section 81-523. The calculation of the taxes due pursuant to this section shall be based only on those premiums remitted for the placement or procurement of insurance by an exempt commercial purchaser whose home state is the State of Nebraska. The department shall prescribe a form for an industrial insured exempt commercial purchaser tax filing.

Sec. 10. This act becomes operative on July 21, 2011.

Sec. 11. Original sections 44-5502, 44-5503, 44-5504, 44-5505, 44-5506, 44-5508, 44-5510, 44-5511, and 44-5515, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 12. Since an emergency exists, this act takes effect when passed and approved according to law.